

APPENDIX K

Matching Funds

I. Introduction

OCRWM could require a small percentage of matching funds, possibly ten percent, from grant recipients. States could use their fees for the match. The intent of the match would be to leverage the impact of Section 180(c).

The purposes of a match, according to a report by the GAO¹, are first, to avoid supplantation or fiscal substitution of Federal money for state and local efforts and, second, to build sustainability of the gains created by the grant. The GAO report stated that “Ideally, grants should stimulate higher levels of preparedness and avoid simply subsidizing local functions that are traditionally state or local responsibilities.”² In the case of Section 180(c), some states have little current fiscal support for radioactive materials transportation preparedness and in those cases, a small match requirement would help build the second goal of sustainability, to “institutionalize a commitment to shared goals and purposes within states and communities, as professional administrators and clients of these programs take root and gain influence within local political circles.”³

The states have voiced consistent opposition to a matching fund requirement. Their position is that Congress intended the Nuclear Waste Fund⁴ to cover all costs associated with the repository, including transportation. They maintain it would be an unfunded mandate if states absorb any costs associated with preparing for shipments to a repository. The states also note that Section 180(c) is silent on matching funds, unlike HMEP’s enabling legislation, which requires it. In addition, the Western Interstate Energy Board has pointed to Executive Order 12875, which states:

“...no executive department or agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless: (1) funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the federal government; or (2) the agency, prior to the formal promulgation of regulations contained in the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation concerning the mandate.”

¹ U.S. General Accounting Office, Homeland Security, Reforming Federal Grants to Better Meet Outstanding Needs, GAO-03-1146T (Washington, D.C.: Sept. 3, 2003)

² Op cit., pp. 15

³ See Paul Peterson, Barry Rabe, and Kenneth Wong, When Federalism Works (Washington, D.C., Brookings Institution, 1985)

⁴ The Nuclear Waste Policy Act, Findings, Item (b)(4).

However, there is an argument to be made that these shipments are a shared responsibility. State, tribal, and local governments have primary responsibility for public health and safety, which includes preparing for shipments of hazardous materials through their jurisdiction. DOE does not add a regulatory requirement by shipping radioactive materials under the Commerce Clause of the Constitution. OSHA and EPA regulations create the mandate, requiring employers to determine the role and functions of employees involved in responding to hazardous materials accidents and train them accordingly. The responsibility is shared because of the Section 180(c) requirement that the Secretary “provide funding and technical assistance for training ...”. A matching fund requirement acknowledges the shared responsibility, helps leverage the impact of Section 180(c) funds, and helps institutionalize radioactive materials transportation preparedness.⁵

The states do not agree with the “shared responsibility” argument. They argue that other federal grant programs with matching fund requirements provide federal funds to states in order to assist them with problems that affect the states individually (e.g., health care). Shipments to the repository, however, are a national problem – one that the states are being asked to help the federal government solve.

Option 1: Do not require matching funds.

- The states prefer this option.
- This option is consistent with the language of Section 180(c), which does not authorize DOE to require matching funds.
- This option also is consistent with the NWPA’s requirement that the Nuclear Waste Fund cover all the costs related to carrying out the provisions of the Act.⁶

Option 2: Require matching funds. States may use their fees for the match.

- This leverages fees to increase the impact and effectiveness of 180(c).
- DOE could offset the impact to states without fees by keeping the match requirement small.
- This could institutionalize funding for radioactive materials preparedness within a state as political entities become accustomed to funding these activities. This would extend the impact of Section 180(c) past the life of the NWPA program.
- This option may conflict with NWPA intent that the Nuclear Waste Fund pay costs associated with the program.

I. Recommendations

The Topic Group recommends that DOE not require a match for any portion of Section 180(c) funds.

⁵ DOE shipment a very small fraction of the total radioactive shipments in the USA (5 thousand compared to 3 million) although DOE comprises the most radioactivity, approximately 75% of total curies shipped.

⁶ NWPA, Purposes, Item (b)(4)